

MEMORANDUM OF LAW

DATE: January 26, 1990

TO: Milon Mills, Jr., Water Utilities Director

FROM: City Attorney

SUBJECT: Dissolution of Penasquitos Sewer Improvement
District and Disposition of Surplus Funds

By memorandum of December 21, 1989 and personal meeting with members of your staff on January 25, 1990, you have requested direction in the dissolution of the Penasquitos Sewer District and the disposition of surplus funds.

The Penasquitos Sewer District was formed on October 15, 1970 by Resolution No. R-201038 under San Diego Utility Improvement District Procedural Ordinance. San Diego Municipal Code section 61.0901 et seq. You represent that "sufficient money is in reserve" to retire all outstanding bonds in Fiscal Year 1990. Moreover, because of retention requirements, you indicate that approximately \$130,000 will exist as a surplus. Further, as permitted in Section 10 of Resolution No. R-201038, approximately \$3.6 million in capacity charges were contributed from the Sewer Revenue Fund to the Penasquitos Sewer District Special Fund.

With the above in mind, dissolution and distribution can be accomplished in accordance with San Diego Municipal Code sections 61.1601-61.1606. Section 61.1601 requires a resolution of intention to dissolve the district. However, that resolution must contain certain mandatory provisions.

SEC. 61.1602 Contents of Resolution

The resolution of intention shall state:

(a) The reason why the improvement district should be dissolved.

(b) That no bonds have been issued for the improvement district or are outstanding and that no other indebtedness or liability of or for the improvement district is outstanding.

(c) That a map showing the exterior boundaries of the improvement district with relation to the territory immediately contiguous thereto is on file with the City Clerk and is available for inspection by any person or persons interested.

(d) The time and place for a hearing by the Council on the question of the dissolution of the improvement district.

(e) That at such time and place any person interested, including all holders of title to property in the City or in the improvement district, will be heard.

Section 61.1602 (emphasis added)

Hence it is not enough to say sufficient money is in reserve to retire the bonds. Rather the resolution must recite that no bonds are outstanding and that no other indebtedness exists. Therefore, after all outstanding bonds are repaid, the department may request a resolution of intention to dissolve the district covering the above quoted requirements. The resolution is there-after published once ten (10) days prior to the hearing, posted in three (3) public places fifteen (15) days before the hearing and mailed to each holder of title within the district fifteen (15) days before the hearing. Section 61.1603.

At the appointed time for the hearing, the Council determines whether it is necessary to dissolve the district and, if so, declares the district dissolved. Section 61.1605. This determination is final and the effective date of dissolution is the date of the resolution. Section 61.1606.

As to disposition of the surplus, there is no controlling municipal statute. However, the only candidates for the surplus are the district property owners and the repayment of the revenue fund. The bondholders have no claim since the bonds, formerly a lien on the district property, have now been extinguished. As between the district property owners and the Sewer Revenue Fund, the surplus should be returned to the Sewer Revenue Fund since the \$3.6 million contributed from the fund to the district operated to reduce the charges on district property owners. Hence the fund should be reimbursed to prevent the double benefit to the property owners of a reduction of charges and a one-time distribution of surplus. Moreover, this repayment of charges advanced is similar to distribution of supplemental assessments found in Streets and Highways Code section 8784 (Improvement Bond Act of 1915 after which Municipal Code section 61.0901 was patterned).

For the above reasons, the Penasquitos Sewer Improvement District may be dissolved by a resolution of intention confirming no outstanding indebtedness and noticed by publication, posting and mailing to district property owners. The surplus funds may be used to reimburse the Sewer Revenue Fund to the extent of funds contributed to the improvement district.

JOHN W. WITT, City Attorney

By

Ted Bromfield
Chief Deputy City Attorney

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cc Lisa Irvine, Revenue Analyst
Water Utilities Department

ML-90-18